

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

60864

FILE: B-185948

DATE: MAY 12 1976

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MATTER OF: Jesse A. Burks - Claim for additional reimbursement for temporary quarters subsistence expenses

DIGEST:

1. Internal Revenue Service employee, transferred from Sao Paulo, Brazil, to Washington, D. C., incurred 48 days of temporary quarters expenses. Reimbursement for such expenses is limited to 30 days since extension for additional 30 days may be granted only for transfers to or from Alaska, Hawaii, the territories or possessions, Puerto Rico, or the Canal Zone. 5 U. S. C. § 5724a(a)(3). Claim for expenses of additional 18 days spent in temporary quarters may not be allowed.
2. Transferred employee spent \$912.59 for food items in 30-day period, including \$425.70 in 1 day. Because Federal Travel Regulations (FPMR 101-7) para. 2-5.4a (May 1973) limits reimbursement to reasonable costs of meals (including groceries consumed while in temporary quarters) and Department of Labor statistics indicate family, similar to that of employee, would spend between \$329 and \$413 per month, such expenses are considered unreasonable in absence of additional evidence that they were justified.
3. Although employing agency has initial responsibility to determine reasonableness of expenditures for subsistence while occupying temporary quarters, GAO has right and duty to review circumstances of each case submitted to it regarding reasonableness of such expenses.
4. Determination of reasonableness of expenditures of employee for subsistence while occupying temporary quarters may be made (by employing agency or GAO) by

reference to statistics and other information gathered by Government agencies, such as U. S. Department of Labor, Bureau of Labor Statistics, regarding living costs in relevant area.

5. Employee, transferred from Sao Paulo, Brazil, to Washington, D.C., spent \$912.59 for food items in 30-day period, including \$425.70 in 1 day, for his family of four. Based upon U. S. Department of Labor statistics monthly food budget for family of four in Washington, D.C., would have been between \$329 and \$413. Therefore, amount of food expenses should be reduced to reasonable amount in computing temporary quarters allowance.

This action concerns a request dated February 17, 1976, from Mary E. Wills, a certifying officer of the Internal Revenue Service, Department of the Treasury, as to the propriety of certifying for payment the voucher of Mr. Jesse A. Burks for reimbursement of expenses incurred in temporary quarters incident to the transfer of his official duty station from Sao Paulo, Brazil, to Washington, D.C., in July 1975.

The record indicates that Mr. Burks incurred subsistence expenses for 48 days while occupying temporary quarters in Alexandria, Virginia, in connection with his transfer. He had been granted a travel advance in the amount of \$2,000 against which he claimed \$1,532.71 in subsistence expenses for the first 30 days spent in temporary quarters, from July 16 through August 14, 1975. He now claims further reimbursement in the amount of \$378.12 for an additional 18 days, from August 15, 1975, through September 1, 1975. The certifying officer has requested our decision (1) as to the reasonableness of the claim for grocery expenses, and (2) as to whether payment for the additional 18 days in temporary quarters may properly be certified.

Answering the second question first, the claim for an additional 18 days is predicated on the fact that Mr. Burks and his family were returning to the United States after living in

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Brazil for 7 years and needed the additional time to locate and occupy permanent quarters in the Washington area. Section 5724a of title 5, United States Code (1970), provides in part as follows:

"(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

* * * * *

"(3) Subsistence expenses of the employee and his immediate family for a period of 30 days while occupying temporary quarters when the new official station is located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. The period of residence in temporary quarters may be extended for an additional 30 days when the employee moves to or from Hawaii, Alaska, the territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. * * *"

The statutory provisions cited above, and the implementing Federal Travel Regulations (FPMR 101-7) (May 1973), are clear and unambiguous. Subsistence expenses while occupying temporary quarters are limited to 30 days. Only employees who are transferred either to or from Hawaii, Alaska, the territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone may be allowed subsistence expenses for an additional 30 days. Employees who transfer to the United States from foreign countries are subject to the 30-day limitation by the express terms of FTR para. 2-5.2a. The 30-day limitation is statutory and cannot be waived. B-176078, July 14, 1972. The fact that extenuating circumstances are present, such as the nondelivery

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of an employee's household goods, does not entitle him to an additional period of time. B-176078, supra; B-167871, September 29, 1969. Nor can erroneous advice or administrative amendment of a travel authorization provide a basis for further reimbursement. B-175111, October 10, 1973.

Accordingly, the extenuating circumstance that Mr. Burks had lived in Brazil for 7 years and needed additional time in temporary quarters may not be taken into consideration. The statutory 30-day limitation is applicable to his transfer from Brazil to the United States, and it may not be extended. The voucher representing the expenses of an additional 18 days spent by Mr. Burks in temporary quarters may not be certified for payment.

With respect to the first 30-day period of temporary quarters for which the travel advance was made, the certifying officer notes that Mr. Burks claimed \$582.63 for groceries in the first 10-day period, \$147.38 for the second 10-day period, and \$182.58 for the third 10-day period. The certifying officer states that such expenditures appear to be unreasonable, and she requests our determination of the correctness of payment.

The Federal Travel Regulations, in chapter 2, part 5, provides for the payment of the subsistence expenses of an employee and his immediate family while occupying temporary quarters when the employee is transferred to a new official station. Paragraph 2-5.4a of the FTR allows reimbursement only for actual subsistence expenses incurred, provided such expenses are incident to occupancy of temporary quarters "and are reasonable as to amount." Charges for meals are allowable, including groceries consumed during occupancy of temporary quarters.

It is the responsibility of the employing agency, in the first instance, to determine that such expenses are reasonable. Where the agency has exercised that responsibility, our Office will not substitute our judgment for that of the agency, in the absence of evidence that the agency's determination was clearly erroneous, arbitrary, or capricious. However, we have the right and the duty to review the circumstances of each case submitted to us and to make an independent determination as to the reasonableness of the claimed subsistence expenses. In this connection, the fact

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that the expenses claimed are within the maximum amounts specified in FTR para. 2-5.4c does not automatically entitle the employee to reimbursement. Rather, an evaluation of reasonableness must be made on the basis of the facts in each case. 52 Comp. Gen. 78 (1972). Accordingly, the amount claimed may be reduced to a reasonable sum as determined on the basis of the evidence in an individual case. Such a determination may be made on the basis of statistics and other information gathered by Government agencies regarding living costs in the relevant location.

In the present case, the employee incurred expenses for groceries in the amount of \$912.59 for a 30-day period, including \$425.70 spent in 1 day. Although no receipts were furnished, the employee has itemized these expenses in a pattern which indicates that the majority of his meals and those of his family were taken in rented quarters. The certifying officer indicates that these expenses are unreasonable. Therefore, we have examined publications prepared by the Bureau of Labor Statistics, Department of Labor, regarding average annual family budgets for urban areas, including Metropolitan Washington, D. C. The most recent statistics regarding urban family budgets are for autumn 1974. Selecting an intermediate budget of \$15,035 per year for a four-person family, such as that of Mr. Burks, and adjusting the budget for food upward by 7.5 percent, the approximate increase in the consumer price index for food in Metropolitan Washington, D. C., for the period between autumn 1974 and July 1975, when the claimed expenses were incurred, we find that a reasonable monthly expenditure for food primarily consumed at home during July 1975 by such a family would be \$328.86, or \$109.62 for each of the allowable 10-day periods. Such a monthly food budget for a family of four with a total budget of \$21,725 per year would be about \$413, or about \$137 per 10-day period. Since the amount of \$912.59 claimed for food costs is considerably in excess of the higher monthly budget of \$413 derived from the Department of Labor statistics, we agree with the certifying officer's conclusion that the amount claimed is unreasonable. Therefore, Mr. Burks' allowance for subsistence expenses while occupying temporary quarters should be based on expenses for food not in excess of the higher monthly budget of \$413 shown above in the absence of additional evidence that a higher amount should be used. In this connection we point out that the Department of Labor statistics

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are based on a budget for a family of four: a 38-year-old husband employed full-time, his non-working wife, a boy of 13, and a girl of 8. Since the statistics are based on averages, the actual expenses of a family would vary in accordance with the actual income, differences in family composition, etc. Such variances could be either up or down.

The voucher and enclosures forwarded with the submission are returned and appropriate action should be taken in accordance with the above.

R. F. Keller

Deputy Comptroller General
of the United States